

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HARRISON FRANKLIN,

Plaintiff,

OPINION AND ORDER

v.

11-cv-736-wmc

GREGORY GRAMS, JOSEPH HARRIS,
MELISSA THORNE, DR. STEVE SCHELLER,
LORI ALSUM, BARBARA DELAP,
DR. DALIA SULIENE and MARC CLEMENTS,

Defendants.

The United States Marshal's office has filed a "Process Receipt and Return" form showing that it has been unable to serve plaintiff's complaint on defendant Dr. Steve Scheller, who used to work for the Wisconsin Department of Corrections. According to the notation on the form, Dr. Scheller left employment with the Wisconsin Department of Corrections in 2008 and no forwarding address is available. The deputy marshal attempted to locate defendant Scheller using various internet database searches, but was unsuccessful.

I conclude that the United States Marshal has made a reasonable effort to locate defendant Scheller and has been unsuccessful. *Sellers v. United States*, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal must make reasonable effort to obtain current address).

A plaintiff cannot maintain a lawsuit against a defendant such as Scheller who has not received notice of the claim against him and is therefore unable to defend against allegations of wrongdoing. Instead, the action must be dismissed as to defendant Scheller, without prejudice to plaintiff's filing a new action against him at some future time if plaintiff is able to locate Scheller to serve him with his complaint.

ORDER

IT IS ORDERED that defendant Dr. Steve Scheller is DISMISSED from this action without prejudice.

Entered this 27th day of August, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge